

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-S-1285-SB of 2010
Date of Decision : 23.12.2015**

Yadwinder Singh @ Pappu

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE GURMIT RAM

Present: Ms. Rajwinder Kaur, Advocate for
Mr. Tribhawan Singla, Advocate for the appellant.

Ms. Lavanya Paul, AAG, Punjab.

GURMIT RAM, J.

This appeal has been preferred by above-said appellant against the judgment and order of sentence dated 7.5.2010 passed by the Court of learned Judge, Special Court, Barnala in criminal case bearing FIR No.56 dated 20.5.2009, under Section 15 of Narcotic Drugs & Psychotropic Substances Act, 1985 (for short – *the Act*), Police Station Tapa vide which he was held guilty for the offence punishable u/S 15 of the Act and awarded sentence of rigorous imprisonment for one year along with a fine of Rs.500/-. In default of payment of fine to further undergo rigorous imprisonment for three months.

2. The case of prosecution in nutshell as put forth before the learned trial Court was that on 20.5.2009, ASI Jasbir Singh along with other police officials was going from Tapa Mandi to Daraj, Daraka etc. on private scooters in connection with patrolling and checking of bad

elements. When the police party reached at drain bridge Daraj at about 3:00 p.m., then from Jethke side on left hand, one person was detected coming towards the drain bridge via pavement while holding a plastic bag in his right hand. The said person on seeing the police party tried to retreat but he was apprehended by ASI Jasbir Singh with the help of his colleagues. During interrogation, the said person told his name as Yadwinder Singh @ Pappu son of Isher Singh, resident of Jeet Nagar, Factory Road, Ram Pura. He was apprised that the police has suspicion that there is some contraband in his bag and as such the same is to be searched. He was further told that under the law he has a right that the search of his bag could be made either from any gazetted officer or Magistrate, if he so desires. He reposed confidence in ASI Jasbir Singh for the search of his bag. Accordingly consent memo in this regard was prepared. During search of the bag, it was found to contain poppy husk, out of which two samples weighing 250 gms. each were separated and the remaining was found to be 3.500 kgs. on weighment. Parcels of the samples and of remaining poppy husk were prepared and were sealed with the seal of 'JS' and the same thereafter were taken into police possession. Seal after use was handed over to HC Kewal Ram. Sample seal was prepared separately. Ruqqa was sent to the police station on the basis of which, the instant case was registered. Accused was formally arrested in this case. Site-plan of the place of recovery was prepared. On returning to the police station, the case property was produced before the SHO and was got deposited in the *malkhana*. Statements of witnesses were recorded. On completion of investigation and on receipt of report of

Chemical Examiner, challan against the accused was presented before the trial Court.

3. Compliance of the provisions of section 207 of Cr.P.C. was made.

4. Finding a prima facie case for the offence punishable u/S 15 of the Act against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

5. During trial of the case, prosecution examined six witnesses in all besides tendering the report Ex.PL of Chemical Examiner to prove its case.

6. Then accused was duly examined as per the provisions of section 313 of Cr.P.C. Entire incriminating evidence as brought on the file against him during trial of the case was put to him, which was denied by him entirely. Further he pleaded his innocence and stated that nothing was recovered from him. He was picked up from his house and brought to police station wherein the present case was planted upon him.

In defence, he also examined HC Gursewak Singh as DW1.

7. After hearing the learned counsel for both the parties and going through the record, the learned trial Court held accused guilty for the offence punishable u/S 15 of the Act vide the impugned judgment of conviction and sentenced him thereunder.

8. Appellant (accused) being not satisfied with the impugned judgment of conviction and order of sentence has come up in the instant appeal before this Court, notice of which was given to the respondent – State. Trial Court record was also requisitioned.

9. I have heard the learned counsel for the appellant, learned State counsel and have also gone through the record with their able assistance.

10. At the time of arguments on this appeal, learned counsel for the appellant has mainly argued that in the case in hand, the alleged recovery of narcotic was effected from public place, but no independent witness was joined at the time of search of the bag of accused. Then it is further her contention that the sample parcel in this case was sent to the office of Chemical Examiner after a delay of about 10 days and as such possibility of tampering with the sample cannot be ruled out. Then she has also pointed out about the non-compliance of the provisions of Section 50 of the Act in the case in hand on the part of the Investigating Officer.

11. But on the other hand, learned State counsel has controverted the above contentions of learned counsel for the appellant strongly and has contended that prosecution version cannot be doubted on the ground that no independent witness was joined by the police party at the time of the search of the bag of accused which led to the recovery of the narcotics in question. The delay of ten days in sending the sample parcel to the office of Chemical Examiner also stood explained since the sample parcel of this case was initially sent to the office of Chemical Examiner on 25.5.2009, but the same could not be deposited in the said office due to *Punjab Bandh*.

12. Now, I deem it necessary to go through the evidence in brief as led by both the parties during the trial of the case which is as under:-

PW1 ASI Jasbir Singh, the Investigating Officer, narrated the facts as per ruqqa Ex.PC sent by him to the police station on the basis of which the instant case was registered vide FIR Ex.PC/1 regarding recovery of the narcotics in question. It is also in his statement that during search of the bag of the accused, poppy husk was recovered, out of which two samples weighing 250 gms. each were separated and the remaining was found to be 3.500 kgs., which were converted into the parcels duly sealed with the seal of 'JS' and further he took the same into his possession vide memo Ex.PB. Further he also deposed that before the search of the bag of the accused his consent was obtained regarding which memo Ex.PA was prepared. He also proved the personal search memo Ex.PD vide which currency notes of ₹200/- recovered from the personal search of appellant were taken into police possession and also the site-plan Ex.PF and sample seal Ex.P1. On returning to the police station, he produced the entire case property along with the accused before the SHO who also sealed the same after verifying the facts of the case. Then on the next day, he produced the case property along with the accused before the Court. Further he deposited one sample parcel and remaining poppy husk in the *malkhana*, Court complex and deposited another sample parcel with MHC Balwinder Singh.

PW2 HC Kewal Ram was one of the members of police party headed by PW1 ASI Jasbir Singh on the date of the alleged recovery. Seal after use was also handed over to him by the Investigating Officer. He fully corroborated the above discussed statement of PW1 with regard to the prosecution version.

PW3 Constable – Chamkaur Singh, PW4 HC – Balwinder Singh and PW5 HC Navdeep Singh were the formal witnesses in this case and they tendered in their statements their duly sworn respective affidavits Ex.PH, Ex.PJ and Ex.PK as the part of their statements.

PW6 Inspector – Sat Pal was posted as SHO, Police Station Tapa on the date of alleged recovery. It is in his statement that on the said date, ASI Jasbir Singh produced before him three parcels of poppy husk, sample seal etc. of this case and he sealed the same with his seal bearing impressions 'SP' after verifying the facts of the case.

DW1 HC Gursewak Singh produced register No.19 of P.S. Tapa which contained entry relating to movement of case property of this case, photocopy of which is Ex.DA.

13. After analyzing the above discussed evidence of prosecution, the same is found to be complete and up to the mark to hold the appellant guilty in this case. Non-joining of the independent witness at the time of the alleged search of the bag of appellant itself is not a ground to disbelieve the version of prosecution. It is a settled law that statement made by the official witness is as good as that of a private witness. Then it is also an established fact that in our society no person from public dares to come forward to depose against the accused either being the resident of his village or to avoid his enmity or for some other reasons. So in this situation, it is not illegal to rely upon the testimonies of official witnesses if the same are found to be trustworthy and confidence inspiring.

14. So far as delay of 10 days in sending the sample parcel to the

office of Chemical Examiner is concerned, it has come on the record in affidavit Ex.PJ of PW4 of HC Balwinder Singh and affidavit Ex.PK of PW5 HC Navdeep Singh that sample parcel of this case was sent on 25.5.2009 initially, but the same could not be deposited in the said office on that date on account of call of *Punjab Band*. So this ground also does not help the appellant from any angle.

15. If PW1 ASI Jasbir Singh was the complainant as well as Investigating Officer of this case that also is not found to be a ground in favour of the appellant, as in the case in hand the alleged recovery was effected by PW1 ASI Jasbir Singh from the bag of the accused during its search. In a case under the Act after the alleged recovery, nothing material remains to be done qua its investigation so as to transfer the investigation of this case to some other Investigating Officer than the Investigating Officer who effected the alleged recovery.

16. In the light of above discussion, **this appeal stands dismissed**. Conviction of the appellant is upheld.

17. Then as per the custody certificate produced by the learned State counsel, the appellant has undergone two months and twenty five days out of the total sentence of one year awarded to him in this case. The alleged recovery is also merely 4 kgs. of poppy husk. The appellant also faced the incarceration for a period of six years during the trial of the case as well as of the appeal. So the substantive sentence of the appellant is reduced to the extent he has already undergone, but anyhow his sentence of fine is kept intact. He is directed to deposit the same within two months from today if not deposited earlier, failing which, to undergo the sentence

as imposed upon him by the learned trial Court in default of payment of fine. So with this modification in the sentence, this appeal stands disposed of.

A copy of this judgment be sent to the quarter concerned for strict compliance.

23.12.2015

Brij

(GURMIT RAM)

JUDGE

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes